Filed 8/9/10 P. v. Scheidt CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. MATTHEW PAUL SCHEIDT, Defendant and Appellant.	A127624 (Humboldt County Super. Ct. No. CR993465-S)

MEMORANDUM OPINION[*]

On November 16, 1999, defendant Matthew Paul Scheidt pleaded not guilty by reason of insanity (NGI). On March 2, 2001, the trial court found defendant to be insane. On June 4, 2001, the court committed defendant to a state mental hospital.

On December 22, 2009—over 10 years after entry of his NGI plea—defendant filed a pro. per. request to vacate that plea on the ground that he had not been adequately advised of the consequences of pleading NGI: namely, that through procedures to extend his state hospital commitment he could be confined for life. (See, e.g., *People v. Lomboy* (1981) 116 Cal.App.3d 67, 68−69.) On December 31, 2009, the trial court filed an order "denying/dropping motion re plea." The court ruled that the 2001 order of commitment

[*] We resolve this matter by Memorandum Opinion pursuant to California Standards of Judicial Administration, section 8.1.

is a final judgment (Pen. Code, § 1237), and as such the court "is without jurisdiction to vacate the plea entered in 1999, upon which a final judgment [was] entered in 2001."

Defendant's counsel has filed an opening brief that sets forth the facts of the case and raises no arguable issues on appeal. Accordingly, we proceed according to the holdings of *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544, and *People v. Dobson* (2008) 161 Cal.App.4th 1422, 1438−1439. As these cases demonstrate, we are not required to review the record to determine whether there are any arguable issues. Defendant has been informed of his right to file a supplemental brief, but has not done so. Accordingly, we may dismiss the appeal.

Dismissal is required because both this court and the trial court lack jurisdiction to directly review defendant's 1999 NGI plea. Defendant's proper remedy is to seek relief by a collateral attack on the plea by a petition for writ of habeas corpus in the trial court. (See *In re Ronald E.* (1977) 19 Cal.3d 315, 322−323, fn. 3; *In re Robinson* (1990) 216 Cal.App.3d 1510, 1513−1515; see also *People v. Minor* (1991) 227 Cal.App.3d 37, 39−40.) We express no opinion on the merits of any such petition or on any question of waiver by failing to raise the issue of alleged inadequate advice for over 10 years.

The appeal is dismissed.

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Marchiano, P.J.

We concur:

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Margulies, J.

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Dondero, J.